No. 73-780

MICHAEL RODAK, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1973

MONIQUE PREUX, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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The issue is whether Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f), which waives deportation of certain aliens who gain "entry into the United States by fraud or misrepresentation," applies to the deportation of a temporary visitor who overstayed the authorized period of her visit.

On November 28, 1969, petitioner, a citizen of Belgium, was admitted to the United States as a non-immigrant visitor. During this visit she gave birth to a child on September 5, 1970 in Colorado Springs, Colorado (R. 13, 24, 30, 43, 46, 57, 58). Petitioner returned to Belgium with her child and then, on June 25, 1971, reentered the United States as a non-immigrant visitor for a period to expire on December 24, 1971.

Before the expiration of petitioner's visitor's visa, the Immigration and Naturalization Service instituted deportation proceedings against petitioner, alleging that she reentered the United States for the purpose of resuming her residence with the father of her child, that she did not possess a valid unexpired immigrant document (see, Section 212(a)(20) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(20)), and that she was excludable at the time of entry under Section 241(a)(1) of the Act, 8 U.S.C. 1251(a)(1) (R. 90). That proceeding was cancelled on November 23, 1971.

On April 13, 1972, new deportation proceedings against petitioner were commenced charging that she was subject to deportation under Section 241(a)(2) of the Act, 8 U.S.C. 1251(a)(2), in that, "* * * after admission as a non-immigrant under Section 101(a)(15) of said Act [she had] remained in the United States for a longer time than permitted" (R. 80). At a hearing on this charge petitioner stated that, when she entered the United States, she "* * * wanted to remain" (R. 68). On October 30, 1972, the hearing officer found petitioner "* * * deportable under Section 241(a)(2) of the Immigration and Nationality Act as an alien who, after admission as a non-immigrant under Section 101(a)(15) of said Act, has remained in the United States for a longer time than permitted, as charged in the order to show cause" (R. 31). As a non-immigrant visitor, petitioner was held ineligible for the benefits of Section 241(f).

Petitioner thereupon filed an appeal with the Board of Immigration Appeals (R. 11); the Board dismissed petitioner's appeal, holding Section 241(f) inapplicable to petitioner since she entered the United States as a non-immigrant visitor (R. 2). The United States

Court of Appeals for the Tenth Circuit affirmed (Pet. App. A).

Petitioner claims that because her entry into the United States was gained by fraud in securing a temporary visitor's visa and because she is the mother of a United States citizen, her deportation is waived by Section 241(f), of the Immigration and Nationality Act, 8 U.S.C. 1251(f), as interpreted in *Immigration and Naturalization Service* v. *Errico,* 385 U.S. 214. This same argument was made and rejected in *Mangabat* v. *Immigration and Naturalization Service,* No. 72-6751, certiorari denied, October 9, 1973, and is fully discussed in our Memorandum in Opposition in that case, upon which we rely.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1974.

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[1] We are serving upon petitioner's counsel a copy of our Memorandum in Opposition in *Mangabat.*